

November 2, 2018

Mr. Eric Chodnicki  
Daft, McCune & Walker, Inc.  
501 Fairmount Avenue, Suite 300  
Towson, MD 21286

Re: Hidden Waters  
Forest Conservation Variance Request  
Tracking # 02-18-2826

Dear Mr. Chodnicki:

A request for a variance from the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains (i.e. Forest Buffer Law) was received by this Department of Environmental Protection and Sustainability (EPS) on October 15, 2018. This request proposes to remove 28 of 54 living specimen trees in order to develop a 24-lot residential subdivision. The majority of the trees to be removed line an existing driveway from Old Court Road to the abandoned farm house. Moreover, 13 of the 28 specimens to be removed are in poor condition; a 29<sup>th</sup> specimen tree to be removed is dead. The 26 specimen trees to remain will be protected in a Forest Conservation Easement; however, it should be noted that three of those are in poor condition or dead.

The Director of EPS may grant a special variance to the Forest Conservation law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The petitioner is seeking to develop a 24-lot subdivision on a 24.4-acre site containing 4.8 acres of forest. Given the site constraints affecting road and utility construction, avoiding all 54 of the specimen trees would render the subdivision infeasible. However, a smaller development could be constructed that does avoid impacts to specimen trees. Therefore, denying this variance

would not deprive the petitioner of all beneficial use of the property. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. The petitioner's plight in fully meeting the Forest Conservation Law is due to the number and location of the specimen trees coupled with other site constraints for the proposed subdivision rather than general conditions in the neighborhood. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The proposed development would be commensurate with the density and house size of the neighboring developments. Therefore, we find that granting the variance will not alter the essential character of the neighborhood and that this criterion has been met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. We have determined that no streams, wetlands or associated buffers will be directly impacted by granting the requested variance. Moreover, 4.6 of the 4.8 acres of forest onsite will be retained in Forest Conservation Easement. Therefore, we find that this criterion has been met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance which is the result of actions taken by the petitioner. The petitioner has not taken any action or created any circumstance necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. The forest conservation plan included with the variance application indicates the use of existing farm road and open field to minimize forest clearing and impacts to specimen trees, which demonstrates reasonable effort to retain as much forest as possible per Section 33-6-111(b) of the Forest Conservation Law. Specifically, only 0.2 of the 4.8 acres of forest would be cleared for an unavoidable sewer connection and SWM facility outfall proposed partially in forest. Therefore, we find that this criterion has been met.

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Based upon our review, this Department finds that the required variance criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. The following note must appear on all subsequent plans submitted for this project:

“A variance was granted by the Baltimore County Department of Environmental Protection and Sustainability on November 2, 2018 from Baltimore County’s Forest Conservation Law. Conditions were placed on this variance to offset the loss of these specimens including payment of a \$17,852 fee in lieu of mitigation.”

2. A \$17,852 fee in lieu of specimen tree mitigation shall be paid to Baltimore County prior to issuance of any permit for this development.
3. All tree planting required to meet the Forest Conservation Law and Forest Buffer Law shall occur in the 0.75-acre open portion of the Forest Buffer Easement.
4. Proposed removal of any additional specimen trees will require a new variance be requested and granted in accordance with Section 33-6-116.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submission of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the next page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Glenn Shaffer at (410) 887-3980.

Sincerely yours,

David V. Lykens  
Deputy Director

- c. Ms. Jennifer Langford, Bozzuto Homes, Inc.  
Ms. Marian Honeczy, Maryland Dept. of Natural Resources

DVL:ges

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I/we agree to the above conditions to the subject property into compliance with Baltimore County's Forest Conservation Law.

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Property Owner's Signature

Date

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Printed Name

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Contract Purchaser's Signature

Date

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Printed Name